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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/673,118	09/26/2003	Andrew D. Flockhart	4366-106	9237
48500	7590	01/10/2008		
SHERIDAN ROSS P.C. 1560 BROADWAY, SUITE 1200 DENVER, CO 80202			EXAMINER WAI, ERIC CHARLES	
			ART UNIT 2195	PAPER NUMBER
			MAIL DATE 01/10/2008	DELIVERY MODE PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

**Advisory Action  
Before the Filing of an Appeal Brief**

Application No.

10/673,118

Applicant(s)

FLOCKHART ET AL.

Examiner

Eric C. Wai

Art Unit

2195

**--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

THE REPLY FILED 14 December 2007 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.  
b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**NOTICE OF APPEAL**

2. ☐ The Notice of Appeal was filed on \_\_\_\_\_. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

**AMENDMENTS**

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because  
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);  
(b) ☐ They raise the issue of new matter (see NOTE below);  
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or  
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: \_\_\_\_\_. (See 37 CFR 1.116 and 41.33(a)).


4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).  
5. ☐ Applicant's reply has overcome the following rejection(s): \_\_\_\_\_.  
6. ☐ Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).  
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.  
The status of the claim(s) is (or will be) as follows:  
Claim(s) allowed: 8, 12, 29 and 32.  
Claim(s) objected to: \_\_\_\_\_.  
Claim(s) rejected: 1-7, 9-11, 13-28, 30, 31, 33 and 34.  
Claim(s) withdrawn from consideration: \_\_\_\_\_.

**AFFIDAVIT OR OTHER EVIDENCE**

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).  
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).  
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

**REQUEST FOR RECONSIDERATION/OTHER**

11. ☐ The request for reconsideration has been considered but does NOT place the application in condition for allowance because: \_\_\_\_\_.  
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). \_\_\_\_\_.  
13. ☒ Other: See Continuation Sheet.

  
**MENG-AL T. AN**  
**SUPERVISORY PATENT EXAMINER**  
**TECHNOLOGY CENTER 2100**

Continuation of 13. Other: 1. Applicant argues:

"However, Le Grand does not teach, suggest or describe determining a probability that a service location will be able to service a work request within a target time by calculating a number of opportunities to service the work request within that target time. Indeed, there is no disclosure in Le Grand of the method by which the probability is calculated. Moreover, it is apparent from Le Grand's characterization of a Figure of merit value indicative of a low probability of delay as being "basically analogous to a... short present wait time" that there is in fact no relation between the probability of delay in Le Grand and a specified target time. Accordingly, reliance on Le Grand for purportedly disclosing these aspects of the claims is improper.

2. Examiner disagrees. Le Grand explicitly states utilizing "figure-of-merit values which are representative of the probability of delay in servicing a call" (col 4 lines 23-25). Therefore, the probability is calculated or is based upon the figure-of-merit values. A target time is inherent in Le Grand since a probability of delay is used. In order for there to be a probability of delay, there must be some reference point in time, in which to indicate delay.

3. Applicant argues:

"The only support in the detailed action that can be found for the position taken by the Office Action that the claimed number of opportunities is disclosed by Le Grand is the statement that "the shortest queue length is indicative of a number of opportunities" (Office Action of October 26, 2007, page 3, 1. 15) with a cite to column 5, 11. 17-23 of Le Grand. However, that portion of Le Grand says nothing about a number of opportunities. Instead, it states that a poll response from a response location will typically represent the queue delay for the qualified agent at that location who currently has the shortest individual queue, and therefore the figure of merit poll response will be representative only of the qualified agent with the shortest queue. (Le Grand, column 5, 11.17-23.)"

4. Examiner asserts that the portion of Le Grand reads upon the claimed limitation. Applicant provides no explicit definition of "number of opportunities" in independent claim 1 or in the specification. Le Grand's qualified agent with the shortest queue would have a greater "number of opportunities" to process a request.

5. Applicant argues:

"Whether or not a short queue length is indicative of a number of opportunities, Le Grand contains no description of calculating a relative probability by calculating a number of opportunities to service a work request. Indeed, applying the reasoning of the Office Action to Le Grand, it would appear that Le Grand would have to first determine a probability, and then a number of opportunities. This is of course contrary to the pending Claims, which require that the probability be determined from a number of opportunities."

6. Examiner asserts that it would have been obvious to one of ordinary skill in the art, at the time of the invention, that a shorter queue length is indicative of a greater number of opportunities for the reasons above. Le Grand states that the figure-of-merit values are representative of probability of delay. Therefore, figure-of-merit values are determined first, thereby indicating probability of delay.